

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Claudio R. Ballard Docket No.: P43312  
Serial No: 09/454,492 Group Art Unit: 3693  
Filed: December 6, 1999 Examiner: Richard C. WEISBERGER  
Title: REMOTE IMAGE CAPTURE WITH CENTRALIZED PROCESSING AND  
STORAGE

**PETITION TO WITHDRAW FINALITY UNDER 37 CFR § 1.181  
AND MPEP 1002(c)(3)(a)**

Director of 3600 Technology Center Director  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Petition is in response to the final Office Action dated July 15, 2009 and the Interview  
Summary dated September 11, 2009.

Remarks begin on page 2.

REMARKS

Applicant submits that the final Office Action dated July 15, 2009 is not a proper final rejection under 37 CFR § 1.113.

Specifically, Applicant submits that the final Office Action includes a new ground of rejection that is neither necessitated by applicant's amendment of the claim, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR § 1.97(c) with the fee set forth in 37 CFR § 1.17(c). Thus, the final rejection is not proper according to MPEP 706.07(a).

The final Office Action includes rejections of independent claim 56 and independent claim 57 under 35 U.S.C. § 112, first paragraph, for lack of written description. Applicant submits that these new grounds of rejection are not necessitated by applicant's amendment of the claims, and are not based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR § 1.97(c) with the fee set forth in 37 CFR § 1.17(c).

Additionally, Applicant submits that the final Office Action dated July 15, 2009 is the first Office Action to substantively examine any claims against prior art (other than with respect to double patenting), and therefore should be non-final.

Further, Applicants submit that prosecution history of this application is extremely unusual and abusive. The first Office Action on the merits was issued on July 2, 2001. Even including that first Office Action, no claim was examined against prior art (other than the parent application regarding double patenting) until the pending Office Action dated July 15, 2009.

After waiting over 8 years after the first Office Action, the Applicant has still not received

an examination of claims 55-57 against prior art regarding anticipation and obviousness.

Applicant asserts that this prosecution history is abusive, and is filled with frivolous restrictions and with an improper requirement under 37 CFR § 1.105.

Thus, Applicant requests that the finality of the pending Office Action be withdrawn.

**REQUEST TO MODIFY THE PERIOD FOR REPLY**

Additionally, Applicant respectfully submits that the final Office Action dated July 15, 2009 was so defective that it was almost impossible for the Applicant to reply. Applicant submits that the corrective Interview Summary dated August 11, 2009 should reset the clock, and should serve as a starting point for calculating the period for reply to the defective final Office Action dated July 15, 2009.

Upon receiving this defective Office Action, Applicant's representatives immediately called Supervisory Primary Examiner (SPE) J. Kramer and left a voice message on July 16, 2009. Applicant has made and received numerous phone calls (July 16, 2009; July 20, 2009; July 24, 2009; July 30, 2009; August 4, 2009; August 5, 2009; August 7, 2009; August 13, 2009; August 18, 2009; August 19, 2009, August 28, 2009; and August 25, 2009) attempting to clarify the defective final Office Action.

These telephone calls included leaving voice messages on August 5, 2009 and August 7, 2009 for Examiner Weisberger. Examiner Weisberger did not respond to these two voice messages. Accordingly, Applicant called Supervisory Primary Examiner (SPE) Kramer on August 13, 2009 in order to get a response. A telephone interview was subsequently scheduled

to take place between Applicant's representatives, Examiner Weisberger and Mr. Kramer.

Eventually, an Interview Summary dated September 11, 2009 was written which appears to have corrected many of the defects. Almost 2 months have been spent on this effort to correct defects.

Applicant submits that the time period set for reply to the final Office Action dated July 15, 2009 should be extended by about 2 months, in order to compensate for the 2 months which the Applicant has spent attempting to correct the defective Office Action.

Thus, the Interview Summary dated September 11, 2009 should serve as the starting point for the period of reply to the pending Office Action.

CONCLUSION

For the above reasons, Applicant requests that the finality of the final Office Action dated July 15, 2009 be withdrawn. Further, Applicant requests that the period of time for reply be modified, so that the shortened statutory period for reply of 3 months begins on September 11, 2009 (the date of the corrective Interview Summary), and ends on December 11, 2009.

Please charge any additional fees necessary for consideration of the papers filed herein, to preserve the pendency of this application and refund excess payments to Deposit Account No. 50-2929, referencing Docket Number P43312.

Should the Examiner have any questions or comments, the undersigned may be contacted at the telephone number listed below.

Respectfully submitted,  
Claudio R. BALLARD



Abraham Hershkovitz  
Reg. No. 45,294

Ed Garcia-Otero  
Reg. No. 56,609

September 15, 2009

HERSHKOVITZ & ASSOCIATES, LLC  
2845 DUKE STREET  
ALEXANDRIA, VA 22314  
(703) 370-4800  
(703) 370-4809 (FAX)